

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

MFA OIL COMPANY, )  
                        )  
and                     )  
                        )  
JANICE SERPICO,     )  
                        )  
and                     )  
                        )  
TAMI ENSOR,         )                      Case No. 2:17-cv-4222  
                        )  
Plaintiffs,         )  
                        )  
v.                     )  
                        )  
UPWORK GLOBAL INC. )  
Registered Agent:    )  
Registered Agent Solutions, Inc. )  
1220 S. Street, Suite 150 )  
Sacramento, CA 95811 )  
                        )  
Defendant.           )

**COMPLAINT**

COME NOW Plaintiffs, MFA Oil Company (hereinafter "MFA Oil"), Janice Serpico, and Tami Ensor, by and through counsel, and for their Complaint against Upwork Global Inc., state as follows:

**Parties**

1. Plaintiff MFA Oil is a Missouri agricultural marketing cooperative, duly organized under the laws of the State of Missouri, with its principal place of business in Columbia, Missouri.

2. Plaintiff Janice Serpico is a resident of the State of Missouri.

3. Plaintiff Tami Ensor is a resident of the State of Missouri.

4. Plaintiffs Janice Serpico and Tami Ensor are employees of MFA Oil.

5. Defendant Upwork Global Inc. (hereinafter "Defendant") is a California corporation whose business address is 441 Logue Avenue, Mountain View, CA 94043. Defendant Upwork Global Inc. may be served by service upon Registered Agent Solutions, Inc., 1220 S. Street, Suite 150, Sacramento, CA 95811.

#### **Jurisdiction and Venue**

6. This case arises under the common law torts of defamation and invasion of privacy.

7. This Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) because there is complete diversity among the parties and the amount in controversy exceeds \$75,000.

8. This Court has specific personal jurisdiction over Defendant, because Defendant operates a national online platform for companies to advertise employment opportunities to independent, freelance professionals, and has published advertisements on its online platform for purported employment opportunities with MFA Oil (a Missouri business entity) that included the names and photographs of Janice Serpico and Tami Ensor (Missouri residents), and which publications did in fact invoke responses by persons seeking employment with MFA

Oil, such that Defendant has created sufficient contacts with the State of Missouri from which the present claims herein arise.

9.     Venue is proper in this Court pursuant to 28 U.S.C. § 1331(a), as a substantial part of the events giving rise to this matter occurred in the Western District of Missouri.

**Facts Applicable to All Counts**

10.   Plaintiff MFA Oil operates petroleum and propane plants in the central United States, convenience stores in Missouri and Arkansas, and other vehicle service franchises in Missouri, and manages numerous employees in operating these businesses, including plaintiffs Janice Serpico and Tami Ensor.

11.   Defendant has published on its online platform several false postings for employment opportunities with MFA Oil (hereinafter “false job postings”), including in those false job postings the names and photographs of Janice Serpico and Tami Ensor as purported persons to contact about such employment opportunities with MFA Oil.

12.   These false postings target job seekers all across the country, including those in Missouri, for employment with a Missouri business entity.

13.   MFA Oil has received and subsequently reported to Defendant numerous inquiries and complaints from job seekers in response to the false job postings, who report having had conversations with individuals impersonating MFA

Oil employees Janice Serpico and Tami Ensor in a scam attempt to obtain and exploit the job seeker's personal and financial information.

14. MFA Oil has informed the Defendant on numerous occasions that it has never used Defendant's online platform to advertise employment opportunities, and that all such postings purported to be done on behalf of MFA Oil are unauthorized and fraudulent.

15. Despite numerous requests to remove the false job postings and any reference to or photographs of Janice Serpico and Tami Ensor from its online platform, Defendant continues to publish and let remain published false job postings which are misleading and deceptive.

**COUNT I - DEFAMATION**  
**(Plaintiff MFA Oil v. Defendant)**

16. Plaintiff MFA Oil adopts and incorporates herein the allegations in paragraphs 1 through 15.

17. Defendant has published or allowed to be published on its online platform false job postings that advertise employment opportunities with MFA Oil.

18. The false job postings specifically identify MFA Oil.

19. The false job postings were not initiated or authorized by MFA Oil or any agent or employee of MFA Oil.

20. Defendant has been made aware by MFA Oil that all such job postings advertising employment opportunities with MFA Oil are false, and are, in fact, instead a fraud scheme.

21. Despite knowledge of the falsity of these postings advertising employment opportunities with MFA Oil, Defendant refuses to remove the false job postings from its online platform.

22. Defendant's continued publication of the false job postings is being done negligently, or with reckless disregard for the truth or falsity of the advertised employment opportunities.

23. As a result of Defendant's defamatory actions, MFA Oil has incurred cost in fielding inquiries into and reporting these false job postings, and has suffered damage to its business reputation.

WHEREFORE, Plaintiff MFA Oil prays that this Court enter judgment in its favor against Defendant Upwork Global Inc. and award MFA Oil compensatory damages for the expense MFA Oil has incurred and continues to incur to address and report these fraudulent job postings and for damage to its business reputation as a result of these fraudulent postings, for its costs in maintaining this action, including reasonable attorneys' fees, and for such other and further relief as this Court deems just and proper.

**COUNT II – APPROPRIATION OF NAME OR LIKENESS**  
**(Plaintiff Janice Serpico v. Defendant)**

24. Plaintiff Janice Serpico adopts and incorporates herein the allegations in paragraphs 1 through 23.

25. Defendant has published and continues to publish false job postings for employment opportunities with MFA Oil that specifically name and include a photograph of Janice Serpico, who is Chief Human Resources Officer at MFA Oil.

26. Defendant did not have Janice Serpico's permission or consent to publish job postings identifying her name and likeness.

27. Defendant continues to publish false job postings identifying Janice Serpico by name and likeness despite being notified that Janice Serpico did not consent to any such use of her name and likeness.

28. These false job postings create an advantage for Defendant because Defendant receives a fee in relation to job postings on its online platform.

29. As a result of Defendant's use of Janice Serpico's name and likeness, Janice Serpico has suffered mental and emotional distress and damage to her professional reputation.

WHEREFORE, Plaintiff Janice Serpico prays that this Court enter judgment in her favor against Defendant Upwork Global Inc. and award her compensatory damages for her anxiety, humiliation, mental anguish, and emotional distress and for damage to her professional reputation, for her costs in maintaining this action,

including reasonable attorneys' fees, and for such other and further relief as this Court deems just and proper.

**COUNT III – APPROPRIATION OF NAME OR LIKENESS**  
**(Plaintiff Tami Ensor v. Defendant)**

30. Plaintiff Tami Ensor adopts and incorporates herein the allegations in paragraphs 1 through 29.

31. Defendant has published and continues to publish false job postings for employment opportunities with MFA Oil that specifically name and include a photograph of Tami Ensor, who is Executive Assistant/Corporate Secretary at MFA Oil.

32. Defendant did not have Tami Ensor's permission or consent to publish job postings identifying her name and likeness.

33. Defendant continues to publish false job postings identifying Tami Ensor by name and likeness despite being notified that Tami Ensor did not consent to any such use of her name and likeness.

34. These false job postings create an advantage for Defendant because Defendant receives a fee in relation to job postings on its online platform.

35. As a result of Defendant's use of Tami Ensor's name and likeness, Tami Ensor has suffered mental and emotional distress and damage to her professional reputation.

WHEREFORE, Plaintiff Tami Ensor prays that this Court enter judgment in her favor against Defendant Upwork Global Inc. and award her compensatory

damages for her anxiety, humiliation, mental anguish, and emotional distress and for damage to her professional reputation, for her costs in maintaining this action, including reasonable attorneys' fees, and for such other and further relief as this Court deems just and proper.

**COUNT IV – INJUNCTIVE RELIEF**  
**(All Plaintiffs v. Defendant)**

36. Plaintiffs adopt and incorporate herein the allegations in paragraphs 1 through 35.

37. Defendant has published and continues to publish false job postings for employment opportunities with MFA Oil, which false job postings specifically identify MFA Oil employees Janice Serpico and Tami Ensor.

38. These false job postings have misled and will continue to mislead members of the public who have viewed these false job postings and acted in reliance on them, having no reason to know of their falsity.

39. Defendant's publication of false job postings purporting to advertise employment opportunities with MFA Oil is of a continuing and abatable nature, and

abatement of publishing the false job postings will cause no substantial inconvenience and will place no unreasonable burden on Defendant or the public.

40. Unless Defendant is enjoined from publishing false job postings about purported employment opportunities with MFA Oil, plaintiffs will suffer serious, substantial, and irreparable injury.

WHEREFORE, plaintiffs MFA Oil, Janice Serpico and Tami Ensor pray that this Court enter a preliminary and permanent injunction ordering Defendant Upwork Global Inc. (1) to remove from its online platform all publications of job postings purporting to advertise employment opportunities with MFA Oil or those identifying Janice Serpico and Tami Ensor; (2) to cease and desist publishing any new or additional postings purporting to advertise employment opportunities with MFA Oil or identifying Janice Serpico and Tami Ensor; (3) to award plaintiffs their costs in maintaining this action, including reasonable attorneys' fees; and (4) to award such other and further relief as this Court deems just and proper.

**SMITH LEWIS, LLP**

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